

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of)	
)	
Implementation of Section 621(a)(1) of the Cable)	
Communications Policy Act of 1984 as amended)	MB Docket No. 05-311
by the Cable Television Consumer Protection and)	
Competition Act of 1992)	
)	

**COMMENTS OF
FAIRFAX CABLE ACCESS CORPORATION
IN RESPONSE TO THE FURTHER NOTICE
OF PROPOSED RULEMAKING**

Fairfax Cable Access Corporation submits these comments in response to the Further Notice of Proposal Rulemaking, released March 5, 2007, in the above-captioned rulemaking ("Further Notice").

1. FAIRFAX CABLE ACCESS CORPORATION ("FCAC") is a 501(c)(3) nonprofit educational organization located in Fairfax County, Virginia. FCAC provides training in public access television and radio production to residents of our community and operates cable channels in the County serving the needs of our community. As an independent, nonprofit organization, FCAC is neither a part of the County government nor any video service provider. At this time, FCAC operates three cable channels that serve Fairfax County, the cities of Fairfax and Falls Church, and the towns of Vienna, Herndon and Clifton, Virginia. These channels

include CHANNEL 10, our flagship public access channel, which includes programs on public affairs, the arts and children's programming. WRLD 30 is our International Channel, which features programming in Spanish, Vietnamese, Korean and other languages serving nine ethnic language communities. We believe the WRLD 30 International Channel provides a great benefit and service to the richly diverse population of our community. WEBR 37 is our cable radio channel, which features a video community bulletin board that runs announcements for hundreds of community, civic and volunteer organizations serving our community.

Fairfax County, Virginia, has a population of over one million residents. The County's LFA is the Fairfax County Board of Supervisors. The County's franchised cable providers are:

Verizon Virginia, Inc. (franchise expires September 2020)

Cox Communications, Inc. (franchise expires May 2013)

Comcast Virginia, Inc. (franchise expires May 2020)

Fairfax County is divided into three distinct cable franchise areas. In two cable franchise areas (the North Franchise Area and South Franchise Area), Verizon competes as an overbuilder with Cox. In the third cable franchise area (the Reston Franchise Area) Verizon competes as an overbuilder with Comcast.

2. FCAC supports and adopts the comments of the National Association of Telecommunications Officers and Advisors, the National League of Cities, the National Association of Counties, the U.S. Conference of Mayors, the Alliance for Community Media, and the Alliance for Communications Democracy, filed in response to the Further Notice.

3. We oppose the Further Notice’s tentative conclusion (at ¶ 140) that the findings made in the FCC’s March 5, 2007, Order in this proceeding should apply to incumbent cable operators, whether at the time of renewal of those operators’ current franchises, or thereafter. This proceeding is based on Section 621(a)(1) of the Communications Act, 47 U.S.C. § 541(a)(1), and the rulings adopted in the Order are specifically, and entirely, directed at “facilitat[ing] and expedit[ing] entry of new cable competitors into the market for the delivery of video programming, and accelerat[ing] broadband deployment” (Order at ¶ 1).

4. We disagree with the rulings in the Order, both on the grounds that the FCC lacks the legal authority to adopt them and on the grounds that those rulings are unnecessary to promote competition, violate the Cable Act’s goal of ensuring that a cable system is “responsive to the needs and interests of the local community,” 47 U.S.C. § 521(2), and are in conflict with several other provisions of the Cable Act. But even assuming, for the sake of argument, that the rulings in the Order are valid, they cannot, and should not, be applied to incumbent cable operators. By its terms, the “unreasonable refusal” provisions of Section 621(a)(1) apply to “additional competitive franchise[s],” not to incumbent cable operators. Those operators are by definition already in the market, and their future franchise terms and conditions are governed by the franchise renewal provisions of Section 626 (47 U.S.C. § 546), and not Section 621(a)(1).

5. We strongly endorse the Further Notice’s tentative conclusion (at para. 142) that Section 632(d)(2) (47 U.S.C. § 552(d)(2)) bars the FCC from “preempt[ing]

state or local customer service laws that exceed the Commission's standards," and from "preventing LFAs and cable operators from agreeing to more stringent [customer service] standards" than the FCC's.

Respectfully submitted,
FAIRFAX CABLE ACCESS CORPORATION

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